

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>SALVATORE R. CURIALE,</b>	:	<b>CIVIL ACTION</b>
<b>SUPERINTENDENT OF INSURANCE OF</b>	:	
<b>THE STATE OF NEW YORK, AND HIS</b>	:	
<b>SUCCESSORS IN OFFICE AS</b>	:	
<b>SUPERINTENDENT OF INSURANCE OF</b>	:	
<b>THE STATE OF NEW YORK, AS</b>	:	
<b>LIQUIDATOR OF NASSAU INSURANCE</b>	:	
<b>COMPANY</b>	:	
	:	
<b>vs.</b>	:	
	:	<b>NO. 95-5284</b>
	:	
<b>TIBER HOLDING CORPORATION</b>	:	

**MEMORANDUM**

**DUBOIS, J.**

**NOVEMBER 10, 1997**

Presently before the Court is the Motion of defendant, Tiber Holding Corporation ("Tiber"), for Reconsideration pursuant to Federal Rule of Civil Procedure 59(e). In the Motion, Tiber asks the Court to reconsider its September 18, 1997 Memorandum and Order in which the Court determined that plaintiff's claim that the corporate veil of Ardra Insurance Company, Ltd. ("Ardra"), a Bermuda corporation, will be governed by the law of New York, not the law of Bermuda. Curiale v. Tiber, No. 95-5284, 1997 WL 597944 (E.D.Pa. Sept. 18, 1997). For the reasons which follow, Tiber's Motion for Reconsideration will be denied.

**I. Background**

This litigation was initiated in May 1994, inter alia, to enforce against Tiber a 1994 New York state court judgment against Ardra by piercing Ardra's corporate veil. The judgment stemmed from Ardra's reinsurance treaties with a New York stock casualty insurer, Nassau Insurance

Company, which was placed in liquidation by the plaintiff. The ownership of Ardra and the other corporations involved in the case is detailed in the Court's September 18, 1997 Memorandum.

Defendant argues in its Motion for Reconsideration that, under New York choice of law principles, the law of Ardra's place of incorporation, Bermuda, must be applied to the claim that Ardra's corporate veil should be pierced. It is plaintiff's position that New York choice of law rules are based on an "interest analysis" and that under such an analysis New York law should be applied to the veil piercing claim.

## **II. Analysis**

### **A. The Standards for a Motion for Reconsideration**

The standards for granting a Motion for Reconsideration under Federal Rule of Civil Procedure 59(e) are quite high. "A motion for reconsideration is not to be used as a means to reargue matters already argued and disposed of" or as an attempt to relitigate "a point of disagreement between the Court and the litigant." Way v. First Citizen's Nat'l Bank, 846 F. Supp. 310, 314 n. 3 (M.D. Pa.) aff'd by 31 F.3d 1175 (3d Cir. 1994). The motion may only be granted if "(1) there has been an intervening change in controlling law; (2) new evidence, which was not available, has become available, or (3) it is necessary to correct a clear error of law or prevent a manifest injustice." Burger v. Mays, No. 96-4365, 1997 WL 611582, \*2 (E.D. Pa. Sept. 23, 1997). See, also, Harsco v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985) cert. denied 476 U.S. 1171 (1986).

Defendant claims in its Motion for Reconsideration that not applying Bermuda law to the veil piercing claim is "clearly erroneous" and will result in a "manifest injustice to Tiber." In support of that contention, defendant cites four recent opinions from courts in the Southern District of New York not previously called to the attention of this Court which apply the law of the state of

incorporation to veil piercing claims. See, Air India v. Pennsylvania Woven Carpet Mills, No. 97-0675, 1997 WL 595294 (S.D.N.Y. Sept. 23, 1997); Soto v. Bey Transp., No 95-9329, 1997 WL 407247 (S.D.N.Y. July 21, 1997); Oost-Lievense v. North Am. Consortium, 969 F. Supp. 874 (S.D.N.Y. 1997); Imagineering v. Lukingbeal, No 94-2589, 1997 WL 363591 (S.D.N.Y. June 30, 1997).

### **B. New York Choice of Law Principles on the Issue of Piercing the Corporate Veil**

New York choice of law rules are based on an “interest analysis” which seeks to “effect the law of the jurisdiction having the greatest interest in resolving the particular issue.” Cooney v. Osgood Mach., 81 N.Y.2d 66, 72, 612 N.E.2d 277, 280 (1993). In claims involving piercing of the corporate veil, some federal courts and lower New York state courts have automatically applied the law of the state of incorporation rather than weighing the interests of each interested state. The most common argument in support of that position is that since a corporation is “a creature of state law whose primary purpose is to insulate shareholders from legal liability, the state of incorporation has the greater interest in determining when and if that insulation is to be stripped away.” Kalb, Voorhis v. American Fin. Corp., 8 F.3d 130, 132 (2d Cir. 1993) (quoting Soviet Pan Am Travel Effort v. Travel Comm., Inc., 756 F. Supp. 126, 131 (S.D.N.Y. 1991)).

However, the New York Court of Appeals has not endorsed this rule, see, e.g., Morris v. New York State Dep’t of Taxation and Fin., 82 N.Y.2d 135, 623 N.E.2d 1157 (1993) (applying New York law to determine that the veil of a Delaware corporation should not be pierced), nor is it applied universally. Occasionally, as in this case, a state other than the state of incorporation has a greater interest in the veil piercing issue. See, e.g., Lehman Bros. Commercial Corp. v. Minmetals

Int'l Non-Ferrous Metals Trading, No. 94-8301, 1996 WL 346426, \*3 n. 3 (S.D.N.Y. June 25, 1996) (“The Court notes without deciding that even assuming that New York’s choice-of-law rules call for application of Chinese law to the alter ego claims, the Court could nevertheless decline to apply Chinese law if it determines applicable Chinese law to be ‘contrary or repugnant to [New York] State’s . . . public policy.’”) (quoting Miller v. Bombardier, Inc., 872 F.Supp. 114, 119 (S.D.N.Y. 1995)); S.J. Berwin v. Evergreen Entertainment, No. 92-6209, 1995 WL 606094 (S.D.N.Y. Oct. 12, 1995) (applying New York law rather than the law of the state of incorporation because both parties treated New York law as controlling); Forum Ins. Co. v. Texarkoma Transportation, 645 N.Y.S.2d 786 (N.Y. App. Div. 1996) (applying New York law rather than law of the state of incorporation because corporate charter had been revoked). See, also Curiale, 1997 WL 597944 at \*7 (explaining that § 307 of the Restatement (Second) of Conflict of Laws, which the Second Circuit quoted in Kalbf v. Voorhis, 8 F.3d at 132-33, to support its decision to apply the law of the state of incorporation, must be read in conjunction with § 306 of the Restatement which allows for the application of a different state’s law if that state has a “more significant relationship.”).

The unique facts of this case make it inappropriate to apply the law of Bermuda, the place of incorporation. First, Ardra is incorporated in Bermuda as an “exempt” corporation. That means that, under its charter, Ardra could only accept business from outside Bermuda and could not conduct business with Bermuda residents or corporations. Thus, the traditional interests of the place of incorporation are greatly diminished. Second, Ardra’s only business was with a New York corporation, Nassau Insurance Company, which conducted the business of insurance, a highly regulated field in New York. Third, the Supreme Court of Bermuda has refused to enforce the judgment underlying this litigation, see Muhl v. Ardra, 1995 No. 484 (Berm. Sup. Ct. May 16,

1997), even though the decision was affirmed by the New York Court of Appeals. See, Curiale v. Ardra Ins. Co., 88 N.Y.2d 268, 667 N.E.2d 313 (1996).

As this case was brought under the Court's diversity jurisdiction, it is the Court's responsibility to interpret New York state law on this issue. Erie R.R. v. Tompkins, 304 U.S. 64 (1938). Since the New York Court of Appeals has not ruled on the application of the law of the state of incorporation to corporate veil piercing claims, this Court is obliged to predict how the Court of Appeals would rule if this case was before it. See, e.g., Jacobson v. Fireman's Fund Insurance, 111 F.3d 261, 267 (2d Cir. 1997). The facts described above, particularly the lack of comity by Bermuda on an issue integral to this litigation, enforcement of the underlying judgment, lead this Court to conclude that the New York Court of Appeals would apply an "interest analysis" to determine which law should be applied to the corporate veil piercing claim in this case.

### **C. Applying the Interest Analysis**

In the September 18, 1997 Memorandum, this Court applied the interest analysis by quoting from Foster v. Berwind Corp., 1991 WL 21666 (E.D. Pa. Feb. 13, 1991). In Foster, the court made the interest analysis under Pennsylvania choice of law rules, which are nearly identical to the interest analysis used by New York courts. Compare Cooney, 81 N.Y.2d at 72 (interest analysis seeks to "effect the law of the jurisdiction having the greatest interest in resolving the particular issue.") with In re Banker's Trust Co., 752 F.2d 874, 882 (3d Cir. 1985) ("under Pennsylvania choice-of-law principles, the place having the most interest in the problem and which is the most intimately concerned with the outcome is the forum whose law should be applied."). The corporate organization and activities in Foster mirror those in this case, and the interest analysis in the Court's September 18, 1997 Memorandum continues to apply: "[T]he proper analysis may be derived simply

bysubstitutingthe names of the parties to this lawsuit for the parties in thatcase,andsubstituting NewYorkforPennsylvania,asfollows:

In this case, [Ardra] was a wholly-owned subsidiary of [Tiber]. [Ardra] was incorporated in Bermuda, but because of its status as an 'exempt' corporation, it was not entitled to do business in Bermuda. [Ardra's] business was conducted in the United States; its business with [Nassau Insurance Company] was conducted in [New York]. Although Bermuda regulates its reinsurance industry, that interest alone does not seem to outweigh [New York's] interest in investigating the claims of its domiciliaries against its own corporations. Therefore, for the purpose of the piercing the corporate veil claim, [the Court] will apply [New York] law. Foster, 1991 WL 21666, at \*2 (citation omitted and footnote number changed).

In sum, New York has a much stronger interest than Bermuda in the outcome of this case. Thus, New York law will be applied to the question of whether Ardra's corporate veil should be pierced.” Curiale, 1997 WL 597944 at \*12-13. The defendant has not presented any new law or evidence that would cause the Court to change that analysis.

### **III. Conclusion**

The Court’s holding in the September 18, 1997 Memorandum and Order that New York law should be applied to plaintiff’s veil piercing claim was correct. The Court made no error of law and the application of New York law to the veil piercing issue will not perpetrate a “manifest injustice.” Nor has defendant offered any new law on this issue. Therecent cases which defendant cites in its Motion merely restate a general rule which is inapplicable in this case. Defendant’s Motion for Reconsideration will, therefore, be denied.

An appropriate Order follows.

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<sup>1</sup>“It is important to note as well that [Tiber] is the defendant here, not [Ardra]. [Tiber] is a Pennsylvania corporation.” Foster, 1991 WL 21666, at \*2.